IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 138 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DAYAL B MISTRY

Appearance:

1. INCOME TAX REFERENCE No. 138 of 1986
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following question has been referred to this Court for its opinion under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Ahmedabad Bench `A'.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing deduction of Rs.5,000/- to the assessee under Section 80 VV of the Income Tax Act, 1961 even though no payment was made by the assessee?"

2. Learned advocate Shri Bharat Naik has appeared for the applicant, whereas nobody has appeared for the respondent-assessee, though the respondent has been served.

3. Looking to the facts of the case it is clear that the assessee had incurred liability to the extent of Rs.5,000/-, but the said amount of Rs.5,000/- was not paid during the relevant previous year. The assessee had claimed deduction of the said amount under the provisions of Section 80 VV of the Act. The I.T.O did not allow the deduction because the amount had not been paid by the assessee to the concerned person. The assessee filed an appeal and in the appeal, the C.I.T (Appeals) set aside the order passed by the Assessing Officer and allowed the deduction. Being aggrieved by the order passed in appeal, the revenue had filed an appeal before the Tribunal. The appeal was dismissed.

4. It is not necessary that the expenditure incurred by the assessee must be actually paid unless, the assessee is following the cash system of accounting. It is not the case here that the assessee was following cash system of accounting and, therefore, expenditure could not have been disallowed simply because actual payment was not made in the previous year. The Section provides "any expenditure incurred by him in the previous year". The concept of "paid" as read by the I.T.O. cannot be substituted for "incurred" as there is no warrant for doing so on a plain construction of the provision. We have perused the impugned order and we are in agreement with the view expressed that C.I.T. (Appeals) that liability to pay Rs.5,000/- had already been incurred by the assessee in the relevant previous year. In our opinion the C.I.T. (Appeals) and the Tribunal were

absolutely right in coming to the conclusion that the deduction of the said amount ought to have been allowed.

5. In the circumstances we answer the question in the affirmative i.e., in favour of the assessee and against the revenue.

The reference stands disposed of with no order as to costs.

9.7.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)

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